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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/244,961	02/04/1999	BRUCE BUTLER WRIGHT	NA-1147	4379

7590 12/18/2001

OFFICE OF CHIEF COUNSEL
ATTN: PATENT COUNSEL
US ARMY SOLDIER SYSTEMS COMMAND
KANSAS STREET
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EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

10

DATE MAILED: 12/18/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-10

Office Action Summary	Applicant(s)	
	WRIGHT, BRUCE BUTLER	
	Applicati n No.	Art Unit
	09/244,961	1743
	Examiner	
	Lyle A Alexander	

-- Th MAILING DATE of this communication appears on th cov r sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2001 .
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taoukis et al. alone or further in view of Olsen et al.

Taoukis et al. teach time temperature indicators indistinguishable from those claimed. Taoukis et al. use of a computer to interpret the results of the indicator but does not use the claimed "plurality of comparator stages..."

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has predictable and well known results.

It is notoriously well known in the art to use color comparison charts to interpret the results of a colorimetric indicator and/or to use a computer to also interpret colorimetric results. It is notoriously well known to use either alone or in combination

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color charts and computers to achieve the expected well known expected results of colorimetric data interpretation. It would have been within the skill of the art to modify Taoukis et al. and include a colorimetric comparison chart to achieve the well known and expected interpretive results.

Olsen et al. teach in figure 10 a color comparison chart indistinguishable from that claimed. Color charts are advantageous because they are robust, inexpensive and can be used by the layperson. They also avert the need for an optical scanner which are expensive and relatively fragile in comparison.

It would have been within the skill of the art to modify Taoukis et al. in view of Olsen et al. and substitute the color comparison chart for the optical reader to gain the above advantages.

Response to Arguments

Applicant's arguments filed 10/3/01 have been fully considered but they are not persuasive.

Applicants remarks and amendments have overcome most of the art of record. Only Taoukis et al. and Olsen et al. continue as art rejections. The Office understands the invention as using convention time temperate indicators with the novelty directed to the use of the color comparison chart in combination with the means for storing data.

The position of record is first, it is known to use computers and color comparison charts to interpret colorimetric data and second, Olsen et al. teaches it is known to use color comparison charts for the reasons of record. Taoukis et al. teaches use of a computer for quantifying and storing results. It would have been obvious to modify

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Taoukis et al. and use any combination of computer and/or color charts to achieve the same result. Alternatively, in view of the teaching of Olsen et al. it would have been within the skill of the art to remove the optical reading device taught by Taoukis et al. and use a color comparison chart prior to entry in the computer to gain the advantages of record (e.g. optical readers being expensive and more fragile than a color chart).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7718 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

December 14, 2001



LYLE A. ALEXANDER
PRIMARY EXAMINER